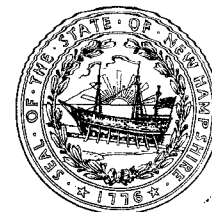




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Peter Nugent
P.O. Box 77
Colebrook, NH 03576

Re: Nugent Bulk Plant, Colby Street
Colebrook, NH
AST Facility No. 200310043

**ADMINISTRATIVE ORDER
No. WMD 05-009**

November 23, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to The Owner pursuant to RSA 146-A:11-c. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services ("DES"), Waste Management Division ("the Division"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Peter Nugent is an individual having a mailing address of P.O. Box 77, Colebrook, NH 03576.

C. STATEMENTS OF FACTS AND LAW

1. RSA 146-A authorizes DES to establish requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Admin. Rules Env-Wm 1402 to establish requirements for the registration, design, installation, operation, maintenance, and monitoring of above-ground petroleum storage facilities.
2. Peter Nugent is the registered facility owner of diesel and gasoline 20,000-gallon vertical aboveground storage tanks ("ASTs"), ("Tanks 1 and 2", respectively), a kerosene, gasoline, and three #2 heating oil 15,000-gallon vertical ASTs, ("Tanks 3 through 7", respectively), and out of service 15,000-gallon and 10,000-gallon horizontal ASTs ("Tanks 8 and 9", respectively) that are located at the Nugent Bulk Plant, Colby Street, Colebrook, NH, ("the Facility") and further identified by DES site number 200310043 and AST identification number 0000190 ("the Property").
3. The AST systems at the Facility are subject to the requirements of RSA 146-A and Env-Wm 1402.

4. On April 28, 2004, Division inspectors conducted a compliance inspection at the Facility and noted compliance deficiencies which were identified in a report dated May 7, 2004, (the "Report") issued to Mr. Nugent.
5. The Report notified Mr. Nugent that compliance was to be achieved within 45 days of the issue date of the Report and to notify the Division of the deficiency corrections in order to avoid enforcement action per RSA 146-A:15 and Env-C 600 for those deficiencies.
6. Among those deficiencies identified in the Report, the Division was not notified that the following were corrected within 45 days of the date of the Report:
 - a. Tanks 8 and 9 were not properly taken out of service;
 - b. Tanks 1 through 7 were not marked;
 - c. Tanks 6 and 7 did not have a product level gauge;
 - d. Tanks 1 through 7 did not have a high level warning alarm;
 - e. Tanks 1 through 7 have not had interior tank inspections;
 - f. The Facility does not have a Spill Prevention, Control, and Countermeasure ("SPCC") Plan.
7. Env-Wm 1402.12 requires the owner of any AST system taken out of service to comply with the out of service requirements of Env-Wm 1402.12.
8. Env-Wm 1402.18(f) requires that all AST systems have tank markings as described in Env-Wm 1402.18(f).
9. Env-Wm 1402.24 requires that all AST systems have overfill protection consisting of a product level gauge in accordance with Env-Wm 1402.24(a) and a high level alarm in accordance with Env-Wm 1402.24(b).
10. Env-Wm 1402.29(c) requires the owner of all AST systems having a capacity of 5,100 or more gallons to thoroughly empty and clean the interior of the tank and have a detailed interior tank inspection performed by a qualified professional engineer ("P.E.") or API 653 certified tank inspector by the time the tank is 10-years old or by April 25, 2002, whichever is later.
11. Env-Wm 1402.30 requires that all AST facilities shall have a written SPCC Plan prepared in accordance with 40 CFR Part 112.
12. In a letter dated June 23, 2004, the Division again notified Mr. Nugent of the deficiencies identified during the April 28, 2004 inspection, and notified him that enforcement action would be initiated if the deficiencies were not corrected within 30 days.
13. On August 9, 2004, the Division received a letter from John A. Engel of Engel Environmental Services, Inc., Gorham, Maine. In the letter, Mr. Engel states that he is working on behalf of Peter Nugent to evaluate the Facility to determine the best course of action to correct the deficiencies outlined in the Report.

14. On March 1, 2005, a Division inspector met with Peter Nugent and conducted a compliance inspection at the Facility, noting that the compliance deficiencies identified in Paragraph C.6 had not been corrected.

D. DETERMINATION OF VIOLATIONS

1. Peter Nugent has violated Env-Wm 1402.12 by failing to properly take Tanks 8 and 9 out of service.
2. Peter Nugent has violated Env-Wm 1402.18(f) by failing to properly mark Tanks 1 through 7.
3. Peter Nugent has violated the overfill prevention requirements of Env-Wm 1402.24 by failing to install a gauge or other measuring device on Tanks 6 and 7, and for failing to have a high level warning alarm that is both audible and visible to the person controlling the transfer of oil on Tanks 1 through 7.
4. Peter Nugent has violated Env-Wm 1402.29 by failing to perform detailed interior tank inspections on Tanks 1 through 7.
5. Peter Nugent has violated Env-Wm 1402.30 by failing to prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112.

E. ORDER

Based on the above findings, DES hereby orders Peter Nugent as follows:

1. **Within 30 days** from the date of this order, properly take Tanks 8 and 9 out of service in accordance with Env-Wm 1402.12.
2. **Within 30 days** from the date of this order, mark Tanks 1 through 7 with the tank number, the safe fill height of the tank, the product stored, and the NFPA symbol as described in Env-Wm 1402.18(f).
3. **Within 30 days** from the date of this order, install product level gauges on Tanks 6 and 7 in accordance with Env-Wm 1402.24(a) and high level alarms on all vertical ASTs in accordance with Env-Wm 1402.24(b).
4. **Within 30 days** from the date of this order, drain, clean, and conduct interior tank inspections on Tanks 1 through 7 in accordance with Env-Wm 1402.29(e).
5. **Within 30 days** from the date of this order, prepare and implement a facility SPCC Plan prepared in accordance with 40 CFR Part 112 pursuant to Env-Wm 1402.30.
6. **Within 45 days** from the date of this order, provide written confirmation to DES that the tasks required by Paragraphs E.1 through E.5 have been completed in accordance with this order.

7. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael W. Juranty, P.E.
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2181
E-mail: mjuranty@des.state.nh.us


F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the receipt of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Peter Nugent of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 146-A:14 and 15 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Division will continue to monitor Mr. Nugent's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Coos County Registry of Deeds so as to run with the land.


Anthony P. Guinta, P.E., Director
Waste Management Division


Michael P. Nolin, Commissioner
Department of Environmental Services

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Gretchen R. Hamel, DES Legal Unit Administrator
Lynn A. Woodard, P.E., Supervisor
Michael W. Juranty, P.E., Chief
Chief, Colebrook Fire Department
Selectmen, Town of Colebrook